IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.BALAKRISHNAN NAIR

WEDNESDAY, THE 21ST FEBRUARY 2007 / 2ND PHALGUNA 1928

WP(C).No. 5751 of 2007(I)

PETITIONER:

OMANA AMMA, W/O.GOPALAN,
SIVASAILAM HOUSE, POTTA, CHALAKUDY.

BY ADV. SRI.A.C.DEVY
SRI.JIJO PAUL KALLOOKKARAN

RESPONDENTS:
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1. TAHSILDAR, TALUK OFFICE,
MUKUNDAPURAM, IRINJALAKUDA.

2. VILLAGE OFFICER, CHALAKUDY.

3. STATE OF KERALA, REPRESENTED BY
CHIEF SECRETARY, GOVERNMENT SECRETARIAT,
TRIVANDRUM.

BY GOVERNMENT PLEADER SRI. MUHAMMED RAFIQ

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 21/02/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.BALAKRISHNAN NAIR,J.

WP(C)NO.5751 OF 2007-I

Judgment

The petitioner challenges Ext.P4 order passed by the Tahsildar, claiming luxury tax for her building. She also challenges the consequential recovery notice Ext.P5. The Tahsildar relied on the recital in Ext.P1 sale deed that the building was not completed on the date of sale i.e., on 27.10.2003. So, admittedly, the building being one completed after 01.04.1999, the Tahsildar held that luxury tax is liable to be collected. The learned counsel for the petitioner relying on the explanation to Sub-section (6) of Section 5 of the Kerala Building Tax Act, submitted that the crucial date is the date when the building is ready for occupation or it has been actually occupied. The said explanation to Section 5(6) of the Act reads as follows:

> *"For the purposes of this Act, the construction of a building shall be deemed to have been completed when it is ready for occupation or has been actually occupied, whichever is earlier."*

Relying on Ext.P2 certificate issued by the Municipality, it is contended that the predecessor in interest of the petitioner occupied the building on 26.03.1999. So the petitioner prays for quashing Ext.P4 and the consequential demand Ext.P5.

2. I heard the learned Government Pleader also. Ext.P2 is issued by the Municipality, stating that the building was completed on 26.03.1999. But, going by Ext.P1, it was not completed even in 2003. It would appear that the completion certificate might have been issued on the said date to the predecessor

in interest. Normally, such certificates are issued to enable the owner to apply for power/water connection. So, ordinarily, on the date of issuance of completion certificate by the Municipality, the building is not normally completed or occupied. Further, the contention made by the petitioner relying on Ext.P2 cannot be accepted in the light of the recital in Ext.P1. At any rate, the view taken by the assessing authority is a plausible view, on the facts, with which, this Court cannot interfere under Article 226 of the Constitution of India. In the result, the Writ Petition fails and it is dismissed.

21.02.2007 **K.BALAKRISHNAN NAIR,JUDGE**

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